



## PRESS RELEASE No 95/23

Luxembourg, 8 June 2023

Judgment of the Court in Case C-49/22 | Austrian Airlines (Repatriation flight)

### **COVID-19 pandemic: a repatriation flight organised in the context of consular assistance does not constitute a re-routed flight that the operating air carrier must offer to passengers whose flight has been cancelled**

*A passenger who registers himself or herself on a repatriation flight and pays to the State that organised it an obligatory contribution to costs is not entitled, on the basis of EU law, to reimbursement of those costs at the expense of the air carrier that was to operate the previously planned flight*

As part of a package holiday, a couple held confirmed reservations for a flight, on 7 March 2020, from Vienna (Austria) to Mauritius, as well as for the return flight OS 18 on 20 March 2020. Both flights were to be operated by Austrian Airlines. The outbound flight went ahead as scheduled. By contrast, on 18 March 2020, Austrian Airlines cancelled the return flight as a result of the measures taken by the Austrian Government due to the COVID-19 pandemic.

Austrian Airlines had the contact details of the couple but did not inform them of that cancellation or of their rights under the Air Passenger Rights Regulation<sup>1</sup>. It was not until 19 March 2020 that they were notified, by their travel organiser, of the cancellation of their return flight and the organisation of a repatriation flight by the Austrian Ministry of Foreign Affairs, scheduled for 20 March 2020, a date by which no more regular flights were being operated. The couple registered for that repatriation flight on the website of the Ministry of Foreign Affairs. In that connection, each of them had to pay an obligatory contribution to costs of €500. That repatriation flight was operated by Austrian Airlines under flight number OS 1024, at the flight time originally reserved for the previously planned return flight OS 18.

By legal proceedings brought against Austrian Airlines, the couple requested the undertaking to be ordered to pay them the sum of €1 000, plus interest. That sum corresponds to the obligatory contribution that they had to pay for the repatriation flight. The Regional Court, Korneuburg (Austria), asks the Court of Justice to interpret the Air Passenger Rights Regulation in that regard.

In its judgment delivered today, the Court points out that only flights of a commercial nature may be involved in the implementation of 're-routing, under comparable transport conditions, to [the] final destination', to which the passenger is entitled according to the Air Passenger Rights Regulation in the event of the cancellation of his or her flight. A repatriation flight, however, is not commercial in nature, in so far as it is organised, in principle, within the context of a State's consular assistance. The conditions of a repatriation flight may, indeed, differ significantly from those of a commercial flight as regards both the conditions for boarding and the services on board. Above all,

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<sup>1</sup> Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).

operating air carriers cannot offer their passengers a repatriation flight as 're-routing', since they are not entitled to confer on those passengers a right to be carried on that flight.

Therefore, the Court holds **that a repatriation flight, organised by a Member State in the context of consular assistance, following the cancellation of a flight, does not constitute 're-routing, under comparable transport conditions, to [the] final destination', within the meaning of the Air Passenger Rights Regulation, which must be offered by the operating air carrier to the passenger whose flight has been cancelled.**

The Court states, moreover, that a **passenger** who, following the cancellation of his or her return flight, registers himself or herself for a repatriation flight organised by a Member State in the context of consular assistance, and who is required to pay on that basis to that State a compulsory contribution to costs, **does not have a right to reimbursement of those costs at the expense of the operating air carrier** on the basis of the Air Passenger Rights Regulation.

By contrast, such a passenger may invoke before a national court the failure of the operating air carrier to comply, first, with its obligation to reimburse the full cost of the ticket at the price at which it was bought, for the part or parts of the journey not made or no longer serving any purpose in relation to the passenger's original travel plan, and, secondly, with its obligation to provide assistance, including its duty to provide information, in order to obtain compensation from that operating air carrier. Such compensation must nevertheless be limited to what, in the light of the specific circumstances of each case, proves necessary, appropriate and reasonable to remedy the shortcomings of that operating air carrier.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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